Supreme Court, U.S.
FILED
APR 6 1987
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 86-1451

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

OGLALA SIOUX TRIBE OF THE
PINE RIDGE INDIAN RESERVATION,
Petitioner,
v.
THE UNITED STATES OF AMERICA and
THE SIOUX TRIBE OF INDIANS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

MEMORANDUM IN OPPOSITION OF RESPONDENT SIOUX TRIBE OF INDIANS

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

4 pp

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This is a case in which the petitioner prevailed before the Federal Circuit, but nevertheless seeks a writ of certiorari to review issues not raised at the trial level and specifically not decided by the court of appeals (Pet. App. 15). The petition is clearly frivolous.

The facts are well stated by Judge Friedman of the Federal Circuit (Pet. App. 2-App. 9). Essentially, the Court of Claims, now the Federal Circuit, seven years ago had found liability on the part of the United States,

and the only issue before the Claims Court on remand was the amount of offsets. *United States* v. *Sioux Tribe*, 616 F.2d 485 (Ct. Cl. 1980), *cert. denied*, 446 U.S. 953 (1980). The Claims Court, however, without a trial on the merits, entered judgment on a proposed settlement never accepted by the eight Sioux tribes which compose the plaintiff Sioux Tribe. The United States, the Sioux Tribe and the Oglala Sioux Tribe (one of the eight tribal representatives) all appealed. The court of appeals reversed, holding a judgment upon an unaccepted settlement to be invalid, and again remanded the case for trial on the offset issue.

There are no extraordinary circumstances calling for interlocutory review by this Court and such review would serve only to delay further this 37-year old litigation.

As noted, the two questions here presented were not raised before the trial court. Moreover, far from having any general significance, the first question involves only the Oglala's particularized concern, not shared by its seven co-plaintiffs below, over remaining a party to a case which is moving to final judgment. Behind the question is the Oglala's apparent dissatisfaction with the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. 70 *et seq.*, which provides for monetary compensation, not return of land. That issue is properly addressed to Congress, not the courts.

The second question presented is academic. The Court of Claims determined that certain Sioux lands were ceded to the United States under the Treaty of April 29, 1868, 15 Stat. 635 (*United States* v. *Sioux Tribe*, *supra*), whereas the Oglala Sioux Tribe argues that the United States acquired title to this territory under the Act of February 28, 1877, 19 Stat. 254 (Pet. Br. 18-21).* In

* The Sioux land claims under the 1877 Act, of course, already have been adjudicated. *United States* v. *Sioux Nation*, 448 U.S. 371 (1980).

either event, the United States has owned and exercised dominion over the lands for at least 110 years and the exact date that title legally passed should engender no current interest.

Petitioner does not advance even a plausible reason why the writ should be granted, much less meet the criteria set forth in Rule 17.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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